SINGAPORE REPORTS

Basco Enterprises Pte Ltd v Soh Siong Wai

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 115 OF 1988
SINNATHURAY, COOMARASWAMY AND CHAN SEK KEONG JJ
29 NOVEMBER 1989

Land Law — Compulsory acquisition — Acquired land to be redeveloped and sold at profit — Whether acquisition mala fide — Acquisition for the purpose of redevelopment — Whether preservation of land and building within 'redevelopment' — Whether land to be preserved should be acquired under Preservation of Monuments Act (Cap 239, 1985 Ed) — State Lands Encroachment Act (Cap 315, 1985 Ed), ss 2, 3 & 4 — Land Acquisition Act (Cap 152, 1985 Ed), s 18(a) — Urban Redevelopment Authority Act (Cap 340, 1985 Ed), ss 15(a), (e) & 18

Words and Phrases — 'Urban redevelopment' — Whether includes preservation or conservation of buildings in urban area — Urban redevelopment to be viewed in context of area being developed — Urban Redevelopment Authority Act (Cap 340, 1985 Ed), s 2

This an appeal by Basco Enterprises Pte Ltd ('the appellants') against the decision of the Chief Justice dismissing the appellants' application under s 3 of the State Lands Encroachment Act (Cap 315, 1985 Ed) ('Cap 315') that the proceedings in URA Summons No URA(L)/22/88 ('the summons') (issued against the appellants as unlawful occupants of state land) be transferred from the magistrate's court to the High Court on the ground that they were raising a claim of title to the property in question. The appellants were the owners of the said property ('the Stamford House') when it was acquired by the government under s 18(a) of the Land Acquisition Act (Cap 152, 1985 Ed) ('Cap 152'). Stamford House was thus State land on the date of the summons and the appellants were in unlawful occupation thereof. The appellants claimed title to Stamford House and accordingly made an application for the action to be transferred to the High Court pursuant to s 3 of Cap 315. The appellants' case was that the acquisition of Stamford House was null and void on 'public law' grounds, specifically, illegality (the misconstruction of statutory powers) and irrationality (perversity/unreasonableness). The appellants contended that the Urban Redevelopment Authority ('URA') and the Ministry of National Development ('MND') (the two government bodies involved) acted ultra vires in purporting to acquire the premises, in that they acted with an improper purpose, namely, to acquire the property at 1973 market value and then to resell by open public tender at the current market value thereby ensuring the accrual of a considerable profit to the URA; also the acquisition was made ostensibly for 'urban redevelopment', but its true purpose was preservation and 'therefore ... the purported acquisition in 1984 was done for improper purposes and in bad faith'.

The evidence adduced by the appellants failed to persuade the Chief Justice that they had raised a bona fide claim of title to Stamford House and he dismissed the application. Before the court, the appellants have relied on the following grounds of appeal: that the Chief Justice made a mistake of fact as regards the date when the appellants first mentioned the fact that they were prepared to preserve the facade of Stamford House; failed to consider whether the acquisition had been invalidated by the evidence of improper purposes, viz with a view to preserving it rather than redeveloping it and/or making a profit by reselling it; failed to consider whether there was a serious issue of fact or law to be tried bearing upon the claim of title. It was also claimed that the argument that the public law considerations were applicable to the exercise of discretionary powers of all public authorities, including decisions of the URA under Cap 152, was overlooked. The appellants also put forward a new argument — that the acquisition was for an improper purpose. Counsel submitted that (i) the expression 'urban redevelopment' (which was the purpose for the acquisition of the property) did not include preservation or conservation; (ii) because of the existence of two separate statutes dealing with different purposes, one with urban redevelopment and the other dealing with preservation of monuments, namely, the Preservation of Monuments Act (Cap 239, 1985 Ed) ('Cap 239'), one purpose was exclusive of the other; and (iii) therefore land or building acquired for the purpose of preservation could not be used for the purposes of the URA, and conversely, land acquired for the purpose of redevelopment should not be used for the purposes of the Monuments Board. The general complaint made by the appellants was that the appellants had been deprived of the opportunity to redevelop the acquired property and to preserve the existing facade by the mala fides of the URA in acquiring the property in 1984 at 1973 market value in order to profit from it by selling it at current market value. The appellants took the position that the allegation of bad faith was intended to apply to the government's declared purpose in acquiring for urban redevelopment when it was actually intended for preservation.

Held, dismissing the appeal:

(1) The appellants' allegation that they had been ready, willing and able to preserve the facade of the building even before it was acquired was more assertive than factual in content.

(2) Another material circumstance which points to the lack of bona fides in the appellants' claim of title is their delay in making it. During the entire period from the commencement of acquisition of the property to the date of the summons, the appellants had not questioned the validity of the acquisition.

(3) The court agreed with the observation of the respondent that the appellants had, in this appeal, shifted their ground from one of improper purpose or bad faith based on the motive of financial gain to one of ultra vires the objects of the Urban Redevelopment Authority Act (Cap 340, 1985 Ed)('Cap 340'). The court also agreed with the submission that there was no evidence that the acquisition was for the purpose of profit.

(4) As regards the ultra vires argument, the submission was that, having regard to the objects of Cap 239 and Cap 340, there were two separate routes or codes governing the acquisition of property for redevelopment and for preservation and that the government have taken the wrong route in the acquisition of Stamford House. In the court's view, the 'two routes or codes' argument is wholly irrelevant to the facts of this case. It was made on the erroneous premise that Stamford House was a monument under Cap 239. Although Stamford House is admittedly a building of historic or architectural interest, there is no evidence that the Monuments Board, at any time since 1984, considered it worthy of preservation as a monument.

(5) Accordingly, the court was left with the question whether 'urban redevelopment' includes preservation or conservation of buildings in the urban areas of Singapore. Stamford House was acquired together with other buildings in the area for the purpose of urban redevelopment, and just because, as one aspect only of the redevelopment, its facade is to be preserved or

because the whole of the existing building is to be preserved, does not, in the court's view, mean that it is not within the ambit of urban redevelopment.

(6) Having regard to the definition of 'urban redevelopment' (which includes reconstruction and repair), it is arguable that the URA is entitled to carry out redevelopment of dilapidated buildings by merely reconstructing and/or repairing them to their original state and condition. The court was also of the view that the appellants have not raised a bona fide claim of title.

Cases referred to

1 *Stockton & Darlington Rly Co* v *Brown* (1860) 9 HLC 246 (refd)
2 *Errington* v *Metropolitan District Rly Co* (1882) 19 Ch D 559 (refd)
3 *Yeap Seok Pen* v *Government of Kelantan* [1986] 1 MLJ 450 (refd)

Legislation referred to

Land Acquisition Act (Cap 152, 1985 Ed) s 18(a)
State Lands Encroachment Act (Cap 315, 1985 Ed) ss 2, 3, 4
Urban Redevelopment Authority Act (Cap 340, 1985 Ed) ss 15(a), (e), 18

Leolin Price QC (*Peter Madhavan* and *AC Louis* with him) for the appellants.
Malcolm Spence QC (*AT Karthigesu* with him) for the respondent.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): This is an appeal by Basco Enterprises Pte Ltd ('the appellants') against the decision of the Chief Justice dismissing the appellants' application under s 3 of the State Lands Encroachment Act (Cap 315, 1985 Ed) ('Cap 315') that the proceedings in URA Summons No URA (L)/22/88 ('the summons') be transferred from the magistrate's court to the High Court on the ground that they were raising a claim of title to the property in question.

The summons was issued under ss 2 and 4 of Cap 315 against the appellants as an unlawful occupant of State land and was in the following terms:

> You are hereby summoned to appear ... to answer the complaint ... that you are in ... unlawful occupation of ... lot no 8 TS 10 as from 31 March 1988 on which lot now stands a building known as No 39 Stamford Road.

The appellants were the owners of the said property ('Stamford House') when it was acquired by the government under the Land Acquisition Act (Cap 152, 1985 Ed) ('Cap 152') in February 1984. By virtue of s 18(a) of Cap 152, the title of Stamford House became vested in the State on 30 December 1987 when the Registrar of Deeds made an entry in the books of the registry to such effect. Prima facie, Stamford House was State land on the date of the summons and the appellants were in unlawful occupation thereof.

However, the appellants claimed title to Stamford House and accordingly made an application for the action to be transferred to the High Court pursuant to s 3 of Cap 315 which, in so far as relevant, provides as follows:

> (2) In any action commenced under section 2 for the removal of any person in unlawful occupation of State land, the defendant may within such time as may be prescribed by the Rules of the Supreme Court for the time being in force, apply to the High Court for the action to be transferred to the High Court on the ground that the defendant is claiming title to the land.
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> (3) On the hearing of any such application, the High Court, if it is satisfied that a bona fide claim of title is raised, may make an order for the action to be transferred to the High Court.

The sole question before the Chief Justice was whether on the evidence before him, the appellants had raised a bona fide claim of title. The appellants' case as set out in the affidavit of their managing director, Moti Lalwani, made on 18 October 1988 ('the ML affidavit') was that the acquisition of Stamford House was null and void on 'public law' grounds, specifically, illegality (the misconstruction of statutory powers) and irrationality (perversity/unreasonableness).

The evidence adduced by the appellants to support their allegations, as set out in the ML affidavit was as follows:

(1) The appellants purchased Stamford House in 1963, reconstructed and renovated it and then let it out as offices and shops. In July 1976, they obtained planning permission from the Ministry of National Development ('the MND') to construct a 20-storey building for a mix of uses, subject to payment within two weeks of $25,700 being 10% of the estimated development charge. The approval lapsed as the appellants failed to comply with the conditions which they now believed were unreasonable. In November 1981, they submitted a fresh application to redevelop a 17-storey building on the site but the application was rejected on two grounds: the plans were not in accordance with zoning requirements and the site was affected by a public scheme.

(2) Between July 1983 and September 1983, the appellants learnt from newspaper reports that the government had decided to preserve the facades of Stamford House and the adjacent Shaw Building and that redevelopment of these two sites would be affected. On 21 September 1983, the appellants' architects wrote to the URA concerning these reports and to inquire about the planning guidelines for preserving the facade of Stamford House and the possibility of a meeting with the government planners. Three more requests were made, on 26 September, 29 September and 17 December 1983 (which elicited non-committal replies on 13 October 1983 and 16 February 1984).

(3) On 18 February 1984, Stamford House was acquired for a public purpose under s 5 of Cap 152. On 14 May

1984, the appellants, through their solicitors, submitted a claim for compensation of $15,000,000 for the reasons given therein, one of which was that they had been prepared to preserve the facade of the building at their own expense or alternatively, to preserve the facade and redevelop its interior structure in accordance with planning requirements. The Collector awarded as compensation the amount of $4,974,060, being its 1973 market value. The appellants have appealed against this award to the Land Acquisition Appeals Board.

(4) In November 1984, the Tourism Task Force published its report to the Minister of Trade and Industry in which it recommended the restoration and preservation of buildings of historic interest as part of the need to project Singapore as a place of Oriental mystique and charm for tourists. On 11 December 1984, the appellants wrote to the Singapore Tourist Promotion Board and suggested, in view of the said report, that it should recommend to the authorities to reconsider the acquisition of Stamford House. Following the Board's refusal to interfere with the acquisition, the appellants in July 1986 wrote to the Minister for National Development ('the Minister') with the same objective. The request was rejected by the URA on 5 January 1987. Undaunted, the appellants on 28 July 1987 wrote a long letter to the chairman of the Feedback Unit setting out, inter alia, all the matters we have hitherto referred to and urging him to look into the possibility of and recommending the revocation of the acquisition order.

(5) On 15 January 1988, the appellants wrote again to the Minister to consider their proposals for the redevelopment of Stamford House. A meeting was held on 20 January 1988 in the MND's offices between its officers and the appellants when the appellants were told that the acquisition could not be reversed under the law. On 25 January 1988, the appellants wrote to the deputy secretary of the MND suggesting a sale of Stamford House on a 99-year lease to the appellants, by private treaty for redevelopment which would involve the retention of the facade. Two further proposals were made by the appellants in a letter dated 10 February 1988. On 12 February 1988 the MND replied to the appellants rejecting their proposals and giving them notice that the URA would proceed to effect clearance of Stamford House and thereafter to have the property restored or redeveloped by public tender in which the appellants would be able to participate. On 26 February 1988, the appellants wrote to the MND that their proposals were worthy of serious consideration and requesting that they be so considered. On 1 March 1988, the MND confirmed the rejection of the appellants' proposals for the reason that 'any course of action taken on restoring or redeveloping Stamford House would have to be through *open public tender*', and that the same was not a matter for administrative discretion or exception. (Emphasis added.)

(6) In March 1988, the URA published its draft Master Plan ('the DMP') for the development of a civic and cultural district bounded by the Singapore River, Clemenceau Avenue, Orchard Road, Bras Basah Road, and the Esplanade Park, within which was situated a collection of architecturally and historically significant buildings. The DMP also envisaged the development of a ceremonial route ('the ceremonial route') linking the Istana with City Hall, and the 'rehabilitation' of four blocks of buildings along the said route, (viz Stamford House, Shaw Building, Eu Court and Hill Street shophouses nos 16-28 even).

On the basis of the above evidence, the appellants contended that (1) 'the URA and the MND acted ultra vires in purporting to acquire the premises, in that they acted with an improper purpose, namely, to acquire the property at 1973 market value and then to resell by open public tender at the current market value thereby ensuring the accrual of a considerable profit to the URA' (para 14 of the ML affidavit); (2) the acquisition was made ostensibly for 'urban redevelopment', but its true purpose was preservation and 'therefore ... the purported acquisition in 1984 was done for improper purposes and in bad faith' (para 17 of the ML affidavit).

The evidence of the respondent as set out in the affidavit of Koh Wen Gin, an officer of the URA, was as follows:

(1) As early as December 1981, a team of planners in the MND had recommended to the MND that buildings of historic, traditional, archaeological, architectural or aesthetic interest in the central area comprising Stamford Road, Hill Street and the immediate surrounds should be conserved and integrated in a comprehensive development of the central area.

(2) This primary recommendation formed the basis of the government's decision to acquire in one declaration of acquisition Stamford House, Shaw Building, Eu Court and three other buildings which would be renovated and conserved and integrated with Capitol Shopping Centre (which had already been compulsorily acquired) with the ultimate objective of creating a civic and cultural district as shown in the DMP.

The evidence adduced by the appellants failed to persuade the Chief Justice that they had raised a bona fide claim of title to Stamford House. He gave the following reasons for dismissing the application: (i) the title of the property had vested in the State on 30 December 1987; (ii) the URA did not acquire the property but the government did and therefore the question of the URA making a profit on the

acquisition did not arise; (iii) the object of 'urban redevelopment' included conservation or preservation of any building, whether alone or together with other developments in the designated urban area; (iv) and therefore, the public law arguments advanced against the acquisition to support the contention that the appellants were never lawfully deprived of their title to the premises proceeded upon wrong premises and were without substance.

Before us, the appellants have relied on the following grounds of appeal as set out in the petition of appeal, viz that the Chief Justice:

(1) made a mistake of fact on a crucial issue in the appellants' case, which was that he found that the appellants had only first mentioned that they were prepared to preserve the facade of Stamford House on 14 May 1984 when there was evidence that they had been so prepared between February 1983 and the date of acquisition;

(2) in deciding the issue before him on the basis that the acquisition had been completed, failed to consider whether the acquisition had been invalidated by the evidence of improper purposes, viz with a view to preserving it rather than redeveloping it and/or making a profit by reselling it;

(3) in deciding that it was the government and not the URA which acquired the land, preferred form to substance as the acquisition was for the purposes of the URA, viz urban redevelopment;

(4) applied the wrong test to the evidence before him, in that he failed to ask himself whether there was a serious issue of fact or law to be tried bearing upon the claim of title;

(5) erred in law in holding that the appellants' 'public law' arguments proceeded on the wrong premises and overlooked the important legal effects of the provisions in the Urban Redevelopment Authority Act (Cap 340, 1985 Ed) ('Cap 340') in that the said arguments were applicable to the exercise of discretionary powers of all public authorities, including decisions under Cap 152.

At the outset of this appeal, counsel for the appellants put forward a new argument that the acquisition was for an improper purpose. He referred to the Preservation of Monuments Act (Cap 239, 1985 Ed) ('Cap 239') which constituted the Preservation of Monuments Board ('the Monuments Board') for the purpose of preserving monuments in Singapore, and contrasted the functions of the Monuments Board with those of the URA under Cap 340. In regard to Cap 239, counsel pointed out that: (a) the expression 'monument' was defined to include any building 'which is considered by the board to be worthy of preservation by reason of its historic, traditional, archaeological, architectural or aesthetic interest'; (b) Stamford House was of historic or architectural interest and was worthy of preservation with or without the acquisition, as a monument under Cap 239; and (c) s 12 thereof provided that the compensation payable for the acquisition of a monument was based on its current market value and not on its 1973 market value as was the case of an acquisition under Cap 152. In regard to the URA, counsel pointed out (a) that under s 15(a) of Cap 340, the URA had the function and duty of preparing and/or executing proposals, plans and projects for (i) the clearance, development and redevelopment of land; (ii) the erection, conversion, improvement and extension of any building for sale, lease rental or other purpose, etc; but that (b) under s 15 (e), the URA's function in regard to 'the preservation and protection of any monument and land of historic, traditional, archaeological, architectural or aesthetic interest' was limited to submitting or making recommendations or proposals to the government or any person or statutory board; and (c) that subsequent amendments made to Cap 340 by Act No 13 of 1989 (which authorized the URA to deal with conservation (as defined) and which repealed s 18) and by Act 39 of 1989 (which repealed and re-enacted Cap 340 without the definition of 'conservation' and s 18) have raised a doubt as to the ambit of 'redevelopment'.

Counsel submitted that for the above reasons, (i) the expression 'urban redevelopment' did not include preservation or conservation; (ii) because of the existence of two separate statutes dealing with different purposes, one with urban redevelopment and the other dealing with preservation of monuments, one purpose was exclusive of the other; (iii) therefore land or building acquired for the purpose of preservation could not be used for the purposes of the URA, and conversely, land acquired for the purpose of redevelopment should not be used for the purposes of the Monuments Board; (iv) the URA had, in the affidavit of Koh Wen Gin, confirmed that Stamford House was acquired for preservation. In the result, the government had acquired Stamford House for a purpose (ie preservation) which was outside the powers of the URA, and in so far as the URA intended to sell the building by public tender, the purpose was properly categorized as a purpose which led to the profitable purchase and resale of the property, which again, was not a purpose falling within urban redevelopment.

Counsel for the appellants further submitted that the point of law raised by him involved not only a question of statutory construction but also one of fact as to the real purpose of the URA or the MND in acquiring Stamford House, or for that matter, in refusing in 1983 to disclose to the appellants the details of the public scheme and also in refusing to allow the appellants to redevelop and preserve Stamford House consistent with the purpose for which the URA had acquired it. He submitted that the appel-

lants had raised a bona fide claim of title as the points he had made raised serious issues of law and fact and were manifestly arguable.

Counsel for the respondent contended that the decision of the Chief Justice was correct. He advanced the following arguments: (i) that the issue as to whether the URA had the duty or power to preserve acquired buildings was one of statutory construction and that the arguments of counsel for the appellants were based on the wrong premise that 'redevelopment' did not include 'preservation'; (ii) that the acquisition of Stamford House must not be considered in isolation as it was acquired together with other buildings in the same redevelopment area; (iii) that urban redevelopment as defined in Cap 340 (ie including 'the construction, reconstruction, extension, repair, alteration, change of use, ... of a building') was wide enough to encompass the preservation or conservation of a building; (iv) that the appellants had failed to discharge the burden of proving that the government had acquired Stamford House in bad faith, and that burden was a heavy one (see *Stockton & Darlington Rly Co* v *Brown*,[1] *Errington* v *Metropolitan District Rly Co*[2] and *Yeap Seok Pen* v *Government of Kelantan*;[3] (v) that as regards the alleged profit motive, the URA had the power to redevelop the building and sell it, but that the building did not become the property of the URA but of the government; (vi) that there was no evidence that the government had acquired the building in order to make a profit rather than to carry out urban redevelopment; and (vii) there was undue delay on the part of the appellants in challenging the validity of the acquisition.

In deciding that the appellants had not raised a bona fide claim of title, the Chief Justice dealt briefly with the circumstances in which the claim of title was made. We think it is necessary to deal with them at some length. The general complaint made by the appellants was that the appellants had been deprived of the opportunity to redevelop the acquired property and to preserve the existing facade by the mala fides of the URA in acquiring the property in 1984 at 1973 market value in order to profit from it by selling it at current market value. The allegations of improper purpose and bad faith were constructed inferentially from two facts: (i) the URA rejected the appellants' proposals to buy back the property by private treaty for redevelopment (which included the preservation of the facade) in a manner consistent with the public scheme; and (ii) the URA's intention to effect the restoration of Stamford House by public tender if there were sufficient interest. So insubstantial was the allegation of bad faith that, in this appeal counsel for the appellants practically abandoned it. Instead, counsel took the position that the allegation of bad faith was intended to apply to the government's declared purpose in acquiring for urban redevelopment when it was actually intended for preservation.

In an attempt to give an impression of unreasonable conduct on the part of the government, the appellants expressed their belief, more than 12 years after the event, that they were not able to comply with two conditions attached to the grant of planning permission to redevelop the site given at the end of 1976 (viz the payment of a development charge estimated at $257,000 and the payment of 10% thereof within 2 weeks) because the first was excessive and the second unreasonable. The facts as disclosed by the exhibits to the ML affidavit do not support any such belief. Planning permission was given in September 1976; it was the appellants who had, on 15 December 1976, applied to the MND for determination of the development charge; the appellants did not question or appeal against the said determination nor ask for more time to pay the said 10%; and it was not until 8 February 1977 that the MND wrote to inform the appellants that their approval had lapsed.

The appellants have also alleged that since December 1981 and up to now, they had been and are still ready, willing and able to redevelop Stamford House in accordance with the public scheme to preserve the building. In relation to this allegation, the Chief Justice found as a fact that it was only after the acquisition in February 1984 that the appellants mentioned for the first time in their solicitors' letter dated 14 May 1984 that they had been prepared to preserve the facade of the building or redevelop the interior of the building in accordance with planning requirements. Counsel for the appellants criticized this finding on the ground that the Chief Justice had not given sufficient consideration to the correspondence exchanged between the appellants' architects and the competent authorities prior to this date and submitted that as the respondent had not denied the evidence of the appellants on this point, the finding of the Chief Justice was wrong.

In our view, the appellants' allegation that they had been ready, willing and able to preserve the facade of the building even before it was acquired was more assertive than factual in content. Their original intention, at least up to 3 February 1983, was to redevelop the site into a 17-storey shop/office building (which would have involved the demolition of Stamford House). Following the appearances of two newspaper reports on 12 July 1983 and 20 August 1983 that the government had decided to preserve the facades of Stamford House and Shaw Building, their architects tried in September 1983 to obtain, without success, planning guidelines for preserving the facade of Stamford House. Nowhere in their architects' letters was it ever indicated that the appellants would be prepared to preserve the facade. We therefore agree with the Chief Justice's finding on this point. In fact, the claim of the appellants was nothing more than an allegation made by the appellants' solicitors in their letter of 14 May 1984 to the Collector in support of the claim for compensation of $15,000,000.

Another material circumstance which points to the lack of bona fides in the appellants' claim of title is their delay in making it. During the entire period from the commencement of the acquisition in February 1984 up to the date of the summons, the appellants had not questioned the validity of the acquisition. It was only when the government finally rejected the appellants' proposals for a private buy-back of the property and the issue and service of the summons that the claim of title was made.

However, counsel for the appellants has contended that the appellants were not aware that Stamford House was to be preserved rather than redeveloped until 1988 when the DMP was published, and hence did not know of the ultra vires or improper purpose or bad faith until then. In our view, the various acts of the appellants showed that the appellants were convinced as early as September 1983, although they could not be absolutely sure, that the facade of Stamford House would be preserved. They wrote to the URA for planning guidelines for preserving the facade after reading the newspaper reports. On 19 December 1984 the appellants were informed by the Singapore Tourist Promotion Board that it was their impression that the URA were aware of the importance of preservation. Thereafter, they offered to preserve the facade of Stamford House if only the URA would sell the property back to them by private treaty.

We would also point out that the claim of title was initially based on the allegation that the true purpose of the acquisition was for profit and not for redevelopment (see para 24 of the ML affidavit). The complaint was not that redevelopment per se did not include preservation or conservation but that no planning advantage would be gained by the course the URA had proposed (viz to sell the building by public tender for preservation), as the appellants were at all times ready, willing and able to preserve the building, and accordingly, the purpose must be to make a profit. This was also the only argument that was made explicit in the appellants' solicitors' request made by letter dated 3 November 1988 to the Registrar for further arguments before the Chief Justice. The contention that the acquisition was ultra vires or for an improper purpose on the reasoning that redevelopment did not include preservation was only canvassed seriously for the first time before us. The grounds of appeal set out in the Petition of Appeal filed on 18 March 1989 did not refer to this ground at all. Similarly, the appellants' skeletal arguments filed on 11 October 1989 also did not refer to this argument except for the less than positive assertion in para 7, that 'urban redevelopment' for the purposes of the Urban Redevelopment Authority Act does not *appear* to include the mere preservation of a property ...' (our emphasis). However, the concluding part of this paragraph made it clear that the real complaint was that the acquisition was made for commercial profit.

In this respect, we agree with the observation of counsel for the respondent that the appellants had, in this appeal, shifted their ground from one of improper purpose or bad faith based on the motive of financial gain to one of ultra vires the objects of Cap 340. We also agree with his submission that there was no evidence that the acquisition was for the purpose of profit.

We turn now to the ultra vires argument. The submission was that, having regard to the objects of Cap 239 and Cap 340, there were two separate routes or codes governing the acquisition of property for redevelopment and for preservation and that the government had taken the wrong route in the acquisition of Stamford House. The argument is founded on the supposed distinction between, as statutory objects, redevelopment and preservation or conservation of land and buildings under two different statutes.

In our view, the 'two routes or codes' argument is wholly irrelevant on the facts of this case. It was made on the erroneous premise that Stamford House was a monument under Cap 239. The expression 'monument' is defined as including any building 'which is considered by the Board to be worthy of preservation by reason of its historic, traditional, archaeological, architectural or aesthetic interest'. A monument may be made subject to a preservation order under s 8 thereof, with the consequence (as set out in s 9) that the monument may not, without the prior written consent of the Monuments Board, be demolished, removed, altered or renovated. A monument which is the subject of a preservation order may, on the advice of the Monuments Board, be acquired by the President under s 12 of Cap 239. Although Stamford House is admittedly a building of historic or architectural interest, there is no evidence that the Monuments Board at any time since 1984 considered it worthy of preservation as a monument. There is also no evidence that preserving the building as a monument under Cap 239 was ever contemplated by the government or the Monuments Board. The possibility of the government acquiring Stamford House at the request of the Monuments Board never arose and could not have arisen in as much as it was not even a monument for the purpose of Cap 239, much less a monument that was the subject of a preservation order under s 8 thereof. There is evidence that the government has certainly considered it worthy of preservation, not as or because it is a monument but as or because it is one of the buildings (which include Shaw Building and Eu Court) abutting the ceremonial route which itself forms only one part of the civic and cultural district to be developed under the DMP.

Accordingly, we are left with the question whether 'urban redevelopment' includes preservation or conservation of buildings in the urban areas of Singapore. This is merely a question of statutory construction. In this re-

gard, counsel for the respondent submitted that the Chief Justice was correct (a) in holding that urban redevelopment must be looked at as a whole and in the context of the area being developed and might consist in part of rebuilding and in part conserving buildings in the area being developed, and (b) in entertaining 'no doubts that conservation or preservation of historical and heritage buildings which had become dilapidated, whether carried out by themselves or together with other developments in [a] designated urban area, clearly encompassed 'urban redevelopment' '. He contended that this interpretation was considerably assisted by the clear and wide definition of that expression in Cap 340.

We agree with this submission. The acquisition of Stamford House must not be considered in isolation as if the public purpose of redevelopment was concerned only with that building. Stamford House was acquired together with other buildings in the area for the purpose of urban redevelopment, and just because, as one aspect only of the redevelopment, its facade is to be preserved or because the whole of the existing building is to be preserved, does not, in our view, mean that it is not within the ambit of urban redevelopment. It is not necessary for us to decide the narrower point whether, if Stamford House had been acquired alone for urban redevelopment, it would have been intra vires the function or power of the URA to carry out that purpose by merely preserving it. But, having regard to the definition of 'urban redevelopment' (which includes reconstruction and repair), it is arguable that the URA is entitled to carry out redevelopment of dilapidated buildings by merely reconstructing and/or repairing them to their original state and condition.

For the above reasons, we are also of the view that the appellants have not raised a bona fide claim of title. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Madhavan Louis & Partners; Tan Rajah & Cheah.*

Reported by *Terence Tan Bian Chye*

Drilex Systems Pte Ltd v Registrar of Companies & Anor

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 78 OF 1989
CHAN SEK KEONG J
28 NOVEMBER 1989

Companies and Corporations — Registration of company name — Appeal against decision of registrar — Meaning of 'person aggrieved' — Companies Act (Cap 50, 1988 Ed), ss 12, 27 & 378

Civil Procedure — Time for filing of motion — Requirement to serve notice of motion — Rules of the Supreme Court 1970, O 55

Words and Phrases — 'Person aggrieved' — Companies Act (Cap 50, 1988 Ed), s 12(6)

The plaintiffs were incorporated under the Companies Act (Cap 50, 1988 Ed) ('the Act') on 3 October 1979. The second defendants were a foreign company and were originally registered on 7 July 1970 as Grant Tool Oil Company. On 5 June 1987 after merging with another company, the second defendants changed their names to Drilex Systems Inc. Despite the protests of the plaintiffs, the new name was registered on 31 March 1989. The plaintiffs then appealed (as an aggrieved person) under s 12 of the Act by way of an originating motion pleading for, inter alia, an order that the registration be set aside. Both defendants then applied to strike out the action, the first defendants on grounds that the application should be by way of originating summons for an order of certiorari and the second defendants on grounds that they were improperly joined and that failing, that the action should have been commenced by writ of summons.

Held, dismissing the defendants' applications:

(1) Registration of a company's name under the Act does not confer a proprietary interest in the name. But it does have the effect of preventing another person from registering the name or a similar name under the Act or carrying on business in Singapore under that name, unless the Minister has consented to the registration of the name under s 27 of the Act.

(2) It is not necessary for the plaintiffs to establish a proprietary interest in the name or to establish that they have a better right to the use of the name than the second defendants before they are aggrieved. The earlier registration conferred on the plaintiffs a statutory protection in that they were assured that the first defendant would not allow the second defendants to register an identical name. By allowing the second defendants to register their new name, the first defendant has deprived the plaintiffs of this advantage.

(3) The loss of this advantage was sufficient to constitute the plaintiffs as an aggrieved person and they were therefore entitled to appeal against the decision of the first defendant under s 12 of the Act.

(4) The time for filing such an appeal runs from the date on which the notice of decision is given to the appellant. As no such notice had been given to the plaintiffs, they were not out of time in filing their appeal.

(5) A notice of originating motion must be served on all parties to the decision appealed against. As the second defendants were a party to the decision of the first defendant, they were notified by their inclusion as defendants.